

JUDGE LAUREN KING

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DR. GREEN, INC., a California corporation

Plaintiff,

v.

JAMES MATTHEW STEPHENS, an
individual, and SPECTRUM
LABORATORIES, LLC an Ohio limited
liability company,

Defendants.

NORTHWEST WHOLESALE GROUP
INC.,

Garnishee.

NO. 2:22-mc-00097-RLS

**JUDGMENT CREDITOR
SPECTRUM LABORATORIES'
MOTION TO STRIKE
GARNISHEE NORTHWEST
WHOLESALE GROUP'S SUR-
REPLY**

(CLERK'S ACTION REQUIRED)

Noting Date: February 17, 2023

I. RELIEF REQUESTED

Judgment Creditor Spectrum Laboratories, LLC ("Judgment Creditor" or "Spectrum") requests that this Court strike Garnishee Defendant Northwest Wholesale Group, Inc.'s ("Northwest") Sur-Reply and the Supplemental Declaration of Jesse Conway in Support of Sur-Reply.

II. STATEMENT OF FACTS

On February 3, 2023, Judgment Creditor filed a motion for default judgment against Northwest for failure to answer the writ of garnishment, which was issued in December. Dkt #7. On February 9, 2023, Northwest filed its Response to the Motion for Default Judgment alleging that the Answer was previously sent in December despite there being no declaration of service demonstrating the same. Dkt. #10. Judgment Creditor filed its Reply arguing that a default judgment and award of reasonable expenses and attorneys' fees was appropriate because Northwest failed to file a timely answer to the writ of garnishment issued by the Court. Dkt. #14.

On February 21, Northwest filed a Sur-Reply to Judgment Creditor's Reply in violation of the Federal Rules of Civil Procedure and the Local Rules for Western District of Washington. Dkt. #16. In its Sur-Reply, Northwest averred: "Plaintiff [Judgment Creditor] has already agreed to strike their motion in return for payment of \$500.00." *Id.* To support the assertion that a settlement had been reached, Northwest provided excerpts from an email exchange between Northwest's counsel and counsel for Spectrum. See Dkt. #17, *Declaration of Jesse D. Conway in Support of Sur-Reply*. The selected excerpts omit the following material components of the parties' exchange.

First, at 4:07 PM on February 6, 2023 (a mere two minutes after the last e-mail which Northwest's counsel provided to this Court), Counsel for Spectrum advised the following:

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From: Danial Pharris <pharris@lasher.com>
Sent: Monday, February 6, 2023 4:07 PM
To: Jesse D. Conway <jesse@conwaylaw.net>
Cc: Elizabeth Luksetich <luksetich@lasher.com>; Julie M. Pendleton <pendleton@lasher.com>
Subject: RE: Spectrum Laboratories LLC vs. Dr. Matthew Green

I have to get the client to agree first. I was trying to find a way to resolve this that might appease them. I'll email you back.

See Declaration of Danial Pharris in Support of Motion to Strike, Ex. A.

Counsel for Spectrum responded two days later, confirming his understanding that no agreement had yet been reached:

From: Jesse D. Conway <jesse@conwaylaw.net>
Sent: Wednesday, February 8, 2023 9:06 AM
To: Danial Pharris <pharris@lasher.com>
Cc: Elizabeth Luksetich <luksetich@lasher.com>; Julie M. Pendleton <pendleton@lasher.com>
Subject: RE: Spectrum Laboratories LLC vs. Dr. Matthew Green

[EXTERNAL]

Danial –

Can you let me know if you will strike the hearing? I believe I need to get a response in soon and would like to avoid the expense. Thank you.

Jesse

Jesse D. Conway
Attorney At Law
1014 Franklin St., Suite 106
Vancouver, WA 98660
Telephone: (360) 906-1007
Fax: (360) 906-8155
www.conwaylaw.net

Id.

1 Three minutes later, Counsel for Spectrum responded, again reminding counsel for
2 Northwest that he was seeking authority for the proposed agreement:
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4 From: Danial Pharris <pharris@lasher.com>
5 Sent: Wednesday, February 8, 2023 9:09 AM
6 To: Jesse D. Conway <jesse@conwaylaw.net>
7 Cc: Elizabeth Luksetich <luksetich@lasher.com>; Julie M. Pendleton <pendleton@lasher.com>; Paul Spadafora <spadafora@lasher.com>
8 Subject: RE: Spectrum Laboratories LLC vs. Dr. Matthew Green

9 I have a conference call with the client tomorrow and will then let you know. I am ok with the deal in principle, but I represent a client and have to obtain authority.

10 *Id.*, Counsel for Northwest immediately responded after two (2) minutes and acknowledged that
11 communication, stating:
12

13 From: Jesse D. Conway <jesse@conwaylaw.net>
14 Sent: Wednesday, February 8, 2023 9:11 AM
15 To: Danial Pharris <pharris@lasher.com>
16 Cc: Elizabeth Luksetich <luksetich@lasher.com>; Julie M. Pendleton <pendleton@lasher.com>; Paul Spadafora <spadafora@lasher.com>
17 Subject: RE: Spectrum Laboratories LLC vs. Dr. Matthew Green

18 [EXTERNAL]

19 Ok I'll hold on a response until then thanks.

20 Jesse D. Conway
21 Attorney At Law
22 1014 Franklin St., Suite 106
23 Vancouver, WA 98660
24 Telephone: (360) 906-1007
25 Fax: (360) 906-8155
26 www.conwaylaw.net

Notice: This email transmission may contain information that is protected by the attorney-client privilege. If you are not the intended recipient, Jesse D. Conway at (360) 906-1007 or 1014 Franklin St., Vancouver, WA 98660.

27 *Id.* Judgment Creditor confirmed shortly thereafter it would **not** agree to any settlement. *Id.*

28 As such, no settlement was reached between Northwest and Judgment Creditor.
29 Northwest's counsel's statement that a settlement had been reached is false and contradicts the
30 complete conversation included herein. See Declaration of Danial Pharris in Support of Motion

1 to Strike, Ex. A. Nonetheless, in his declaration, counsel for Northwest avers: “Attached as Exhibit
2 A is a true and correct copy of an email exchange dated February 6, 2023. I believe this to be a
3 binding settlement agreement.” Dkt #17.
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5 On March 2, 2023, counsel for Spectrum advised Northwest’s counsel via e-mail that it
6 believed their representations to the Court about the existence of a purported “settlement” were
7 false, and requesting they strike the surreply and declaration. Counsel for Spectrum further advised
8 Northwest’s counsel that if they failed to withdraw the pleading, they would seek sanctions under
9 Rule 11. *See Declaration of Danial Pharris in Support of Motion to Strike*, Ex. B. Counsel for
10 Spectrum declined. *Id.* This motion follows.
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13 IV. AUTHORITY

14 A. Northwest’s Surreply Violates the Local Rules and Should be Stricken.

15 Surreplies are generally prohibited in the Western District of Washington. Western District
16 of Washington Local Rule 7(g) authorizes a sur-reply only in one express and narrow circumstance:
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18 Requests to strike material contained in or attached to submissions of opposing
19 parties shall not be presented in a separate motion to strike, but shall instead be
20 included in the responsive brief, and will be considered with the underlying
21 motion. The single exception to this rule is for requests to strike material
22 contained in or attached to a reply brief, in which case the opposing party may
file a surreply requesting that the court strike the material . . .

23 Here, Northwest did not ask the court to strike material included in Judgment Creditor’s reply.
24 Dkt #16. Rather, Northwest simply regurgitated the argument included in its response and also
25 sought to belatedly proffer deceptive statements regarding settlement, which it could have (but
26

1 did not) offer in its opposition papers. In so doing, Northwest not only attempts manufacture a
2 “settlement agreement” by omitting crucial intervening e-mails in the thread, but also attempts to
3 foreclose Spectrum’s ability to properly address and respond to that misrepresentation in its reply
4 brief.
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6 With respect to Northwest’s Sur-Reply, the Local Rules for the Western District of
7 Washington only provide for a motion, an opposition, and a reply. There is only one express
8 circumstance allowing for a sur-reply, which does not apply here as Northwest is not moving to
9 strike. As a result, this Court should strike and refuse to consider the Garnishee Defendant’s Sur-
10 Reply. Further, this Court should also strike the Supplemental Declaration of Jesse Conway in
11 Support of Sur-reply as it contains false and misleading statements regarding settlement.
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14 15 **V. PROPOSED ORDER**

16 A proposed order is submitted herewith.
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19 DATED this 7th day of March 2023.
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21 LASHER HOLZAPFEL
22 SPERRY & EBBERSON, PLLC

23 /s/ Danial D. Pharris

24 Danial D. Pharris, WSBA No. 13617
25 Paul Spadafora, WSBA No. 49777
26 Attorneys for Judgment Creditor

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DECLARATION OF SERVICE

On March 7, 2023, I caused to be served a true and correct copy of the foregoing document upon counsel of record, at the address stated below, via the method of service indicated:

Jesse D. Conway
Conway Law, PLLC
1014 Franklin Street, Suite
Vancouver, WA 98660

- ☐ Via Messenger
☐ Via E-Service via King County
☐ Via Overnight Delivery
Via U.S. Mail
☒ Via Email

JESSE@CONWAYLAW.NET

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 7th day of March, 2023, at Seattle, Washington.

By: /s/ Elizabeth Luksetich
Elizabeth Luksetich, Legal Assistant